

# **EXHIBIT**

# **128**

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
Master File No. 1:17-cv-00916-RA-BCM  
- - - - -x  
In re:  
Global Brokerage, INC.  
F/K/A FXCM, INC.  
Securities Litigation  
- - - - -x  
Virtual Zoom Deposition  
  
December 9, 2020  
10:02 a.m.  
  
CONFIDENTIAL VIDEOTAPED VIRTUAL  
DEPOSITION of JOSHUA ROSENFELD, in the  
above-entitled action, held at the above  
time and place, taken before Jeremy  
Richman, a Shorthand Reporter and Notary  
Public of the State of New York, pursuant  
to the Federal Rules of Civil Procedure,  
and stipulations between Counsel.

\* \* \*

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2 did.

3 Q. Do you know what transactions  
4 those bills and invoices would be  
5 referring to?

6 A. All for order flow.

7 Q. Were there any bills of --

8 A. Those are the --

9 Q. Sorry, go ahead.

10 A. Yeah, for order flow.

11 Q. So were there any bills or  
12 invoices sent from FXCM Holdings during  
13 the 2010 to 2014 time period other than  
14 to EFFEX for order flow?

15 A. If there were any others,  
16 there could have been, but I don't  
17 recall any at this time. If there was  
18 anything, then it would be a one-up  
19 item, you know, one-time -- it was  
20 nothing with any regularity, definitely  
21 not.

22 Q. Are you familiar with the  
23 sources of revenue generated by FXCM  
24 Holdings during the 2010 to 2014 time  
25 frame?

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2 million. How does that dovetail with  
3 what we were recording in April, May,  
4 June, July and now?

5 And then in your email above,  
6 you write, T-F, which, is that a typo  
7 for if?

8 A. If -- yeah, that should have  
9 been if, I-F.

10 Q. You write, If you look at US  
11 in June there is a small negative for  
12 EFFEX. This was a retrocorrection to  
13 bring all of EFFEX income to the 21 per  
14 mil rate, so that rate is what we are  
15 showing since the project began.

16 In Mr. Lande's email, do you  
17 understand Josh to be you?

18 A. Do I understand it to be  
19 what?

20 Q. Where Mr. Lande says,  
21 Question for Josh, is that you?

22 A. Yes, that's me.

23 Q. And your email is in response  
24 to his question about \$21 per million?

25 A. Yes.

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2 Q. And what did you understand  
3 Mr. Lande to mean by, What we were  
4 recording?

5 A. Well, you would have to ask  
6 him. But my, it seems my understanding  
7 of what he meant was the contract says  
8 21, did we actually charge him 21, or  
9 was the rate slightly different up to  
10 this point, where this is a final rate  
11 agreed upon? And the response seems to  
12 be that we, initially we may have  
13 charged slightly higher. In June we  
14 made a retroactive correction where all  
15 the volume up to that date ended up  
16 being paid at 21, and going forward we  
17 were at 21 per million.

18 Q. Okay. And the payments and  
19 the 21 per million rate, is that  
20 referring to --

21 A. Order flow.

22 Q. -- EFFEX's payments for order  
23 flow?

24 A. Yes.

25 Q. When you say U.S. in your

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2 FXCM trading volume?

3 A. Yes, it does.

4 Q. And does this chart reflect  
5 that EFFEX made reference to FX U.S.  
6 for EFFEX trading volume captured by  
7 FXCM for March and April 2010?

8 A. Yeah.

9 Q. Does this chart reflect the  
10 correction or the adjustment that we  
11 discussed earlier today from Exhibit 9  
12 with respect to billing to EFFEX and  
13 payments made by EFFEX for June 2010 or  
14 the months prior?

15 A. I would assume so, yeah.

16 Q. And does -- is there any way  
17 to tell from this chart that that  
18 adjustment or correction had taken  
19 place, or is this the net result of  
20 that adjustment or correction?

21 A. I don't know. I don't know.

22 Q. Well, looking at the chart,  
23 are you -- sorry.

24 A. You know, the chart itself  
25 seems very straightforward. But based

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2 on all those emails, I myself am  
3 wondering, now, how did everything go  
4 back to 21 if some of the months seem  
5 to have been at different rates.  
6 October, November.

7 Q. And just to clarify, is there  
8 anything on the face of this chart that  
9 would indicate that the adjustment or  
10 correction that we were talking about  
11 earlier had taken place?

12 A. No. It's just, it just seems  
13 to be a very clean presentation where  
14 the fee per million is always the same  
15 and, you know, it shows what the  
16 revenue was and what the balance due  
17 is.

18 Q. For October and  
19 November 2010, the fee per million is  
20 stated at \$21, not 17.50, like the  
21 invoices we looked at earlier today in  
22 Exhibits 12 and 13. Do you see that?

23 A. Yeah, I see that. That was  
24 the first thing I noticed when I looked  
25 at this.

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2 what we've seen before. It has dates,  
3 volumes, amounts billed and total  
4 through March of 2014. It seems to be  
5 that.

6 Q. Okay. And if you look at  
7 this chart, does anything on the face  
8 of this chart reflect a correction or  
9 adjustment that we talked about earlier  
10 today as Exhibit 9 with respect to  
11 billing EFFEX and payments made by  
12 EFFEX for June 2010 and the months  
13 prior?

14 MR. DAHAN: Objection to  
15 form.

16 A. I don't know what your  
17 question is.

18 Q. Is there anything on the face  
19 of this document that indicates the  
20 correction or adjustment that we  
21 discussed earlier today about the  
22 billing, billing to EFFEX or payments  
23 made by EFFEX for the month of  
24 June 2010 or the months before?

25 MR. DAHAN: Same objection.



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2 A. On the surface, no. I don't  
3 see that.

4 Q. And if you look at October  
5 and November 2010, you see that the fee  
6 per million is stated at \$21, not 17.50  
7 like the invoices we looked at earlier  
8 on Exhibits 12 and 13, do you see that?

9 A. Yeah, yes, I do.

10 Q. And do you know why the rates  
11 listed in this document do not match  
12 the rates from the invoices that were  
13 sent to EFFEX?

14 A. No. They must have been  
15 revised later on, but I don't know.

16 Q. Okay. And in the -- you see  
17 the chart is broken down into sections  
18 and gray areas, and there's one column  
19 that says USD/JPY, is that the  
20 dollar/Yen currency?

21 A. It is.

22 Q. And the next section to the  
23 right, there's a column that says  
24 EUR/USD volume. Is that the  
25 Euro/dollar currency pair?

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CERTIFICATION

I, JEREMY RICHMAN, a Notary Public for  
and within the State of New York, do  
hereby certify:

That the witness whose testimony as  
herein set forth, was duly sworn by me;  
and that the within transcript is a true  
record of the testimony given by said  
witness.

I further certify that I am not  
related to any of the parties to this  
action by blood or marriage, and that I am  
in no way interested in the outcome of  
this matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 17th day of December,  
2020.

  
<%16780,Signature%>

JEREMY RICHMAN

\* \* \*